

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re: :
: Chapter 7
ORLY GENTER, :
: Case No.: 19-13895 (JLG)
Debtor. :
:
----- X

**SUPPLEMENTAL DECLARATION OF ROCCO A. CAVALIERE IN SUPPORT OF
CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER PURSUANT TO RULE 9019 OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (A) APPROVING
SETTLEMENT AGREEMENT AND (B) GRANTING RELATED RELIEF**

I, Rocco A. Cavaliere, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Partner at the law firm of Tarter Krinsky & Drogin LLP, counsel to Deborah J. Piazza, the successor chapter 7 trustee of the estate of Orly Genter. I respectfully submit this Supplemental Declaration in further support of the *Trustee's Motion for an Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (A) Approving Settlement Agreement and (B) Granting Related Relief* (the "Motion") [Dkt. No. 421] and in support of the Trustee's Reply to Various Objections to the Motion that is being filed contemporaneously herewith.

2. Attached as **Exhibit 82** is a true and correct copy of an email chain between John Dellaportas and Rocco Cavaliere dated July 1 - 2, 2021.

3. Attached as **Exhibit 83** is a true and correct copy of an email and term sheet dated May 4, 2020.

4. Attached as **Exhibit 84** is a true and correct copy of a memorandum dated December 16, 2019, without exhibits, prepared by Emmet Marvin & Martin LLP.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 27, 2021

/s/Rocco A. Cavaliere

Rocco A. Cavaliere
Tarter Krinsky & Drogin LLP
1350 Broadway, 11th Floor
New York, New York 10018
(212) 216-8000

EXHIBIT 82

Sheree Nobles

From: Rocco A. Cavaliere
Sent: Tuesday, July 27, 2021 3:05 PM
To: Sheree Nobles
Subject: FW: Genger



Rocco A. Cavaliere|Partner
T: 212-216-1141|F: 212-216-8001
rcavaliere@tarterkrinsky.com|[Bio](#)
Tarter Krinsky & Drogin LLP
1350 Broadway|New York|NY|10018
www.tarterkrinsky.com|[LinkedIn](#)
[COVID-19 RESOURCE CENTER](#)

From: John Dellaportas <JDellaportas@EMMETMARVIN.COM>
Sent: Friday, July 2, 2021 1:26 AM
To: Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com>
Cc: Thomas A. Pitta <TPITTA@EMMETMARVIN.COM>
Subject: Re: Genger

Good luck with that.

On: 02 July 2021 01:12,
"Rocco A. Cavaliere" <rcavaliere@tarterkrinsky.com> wrote:

Agreed that your motion to dismiss was completely unnecessary. And wasteful. My firm will either be paid its reasonable fees from the estate or possibly from your client, to the extent we decide to seek reimbursement of such fees after the motion to dismiss is denied. Either way is fine.



Rocco A. Cavaliere|Partner
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From: John Dellaportas <JDellaportas@EMMETMARVIN.COM>
Sent: Friday, July 2, 2021 1:03 AM
To: Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com>
Cc: Thomas A. Pitta <TPITTA@EMMETMARVIN.COM>
Subject: Re: Genger

Any fees you incurred in connection with the motion to dismiss were completely unnecessary and hopefully will never be reimbursed from the estate.

On: 02 July 2021 00:54,

"Rocco A. Cavaliere" <rcavaliere@tarterkrinsky.com> wrote:

John, you caused our firm to incur significantly more in legal fees than were needed in this case due to the motion to dismiss you filed, and now you are complaining about our legal fees, which is a fraction of the \$2.55 million recovery for the estate? This is a waste of time. I am sorry I bothered you with my email earlier. Good night.



Rocco A. Cavaliere|Partner
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[COVID-19 RESOURCE CENTER](#)

From: John Dellaportas <JDellaportas@EMMETMARVIN.COM>
Sent: Friday, July 2, 2021 12:33 AM
To: Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com>
Cc: Thomas A. Pitta <TPITTA@EMMETMARVIN.COM>
Subject: Re: Genger

How much of that \$2.55 million will be going to your firm, Rocco?

On: 02 July 2021 00:25,

"Rocco A. Cavaliere" <rcavaliere@tarterkrinsky.com> wrote:

John,

I respectfully disagree. There is nothing outrageous about a \$2.55 million settlement that ensures a significant distribution to holders of allowed claims for the reasons set forth in the motion. On the other hand, your client's motion to dismiss and the significant costs that were required to be borne by all parties with that wasteful exercise is what is truly outrageous. Have a good evening counselor.

Regards,

Rocco

Sent from my iPhone



Rocco A. Cavaliere|Partner
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On Jul 2, 2021, at 12:00 AM, John Dellaportas <JDellaportas@emmetmarvin.com> wrote:

Rocco, it would have been better had you approached us before giving away the entire \$32.3 million at issue to the debtor and her fraudulent transferees. As you know, we made several offers to you in that

regard, all of which you disregarded (except for the one you initially agreed to and then reneged on). Now that you have given away the store, while securing a generous payout for your own law firm, you have left no pathway toward a meaningful resolution, short of withdrawing your outrageous 9019 motion. We strongly suggest you do so. John

John Dellaportas

Emmet, Marvin & Martin, LLP
120 Broadway 32nd Floor
New York, NY 10271
Tel: [212-238-3092](#)
Fax: [212-238-3100](#)
Email: jdellaportas@emmetmarvin.com

<0.jpg>

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From: Rocco A. Cavalieri <rcavaliere@tarterkrinsky.com>
Sent: Thursday, July 1, 2021 11:57 PM
To: Thomas A. Pitta <TPITTA@EMMETMARVIN.COM>
Cc: John Dellaportas <JDellaportas@EMMETMARVIN.COM>
Subject: RE: Genger

Tom,

It has been exactly one month since I approached you about whether Sagi would be interested in the Trustee attempting to reach a global resolution by and between the Sagi/Dalia/Oldner group and the “Broser/Arie/Herschmann group”, whereby the parties could exchange mutual releases. A global resolution, if one could be reached between the parties, could result in a seven figure payment for Sagi and would avoid any additional disputes concerning counterclaims and possible equitable subordination, while at the same time providing finality to the endless Genger family litigations. The Trustee and I are disappointed that you did not even bother to respond to our inquiry.

Rocco

Rocco A. Cavalieri|Partner
T: [212-216-1141](#)|F: [212-216-8001](#)
rcavaliere@tarterkrinsky.com|[Bio](#)
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[COVID-19 RESOURCE CENTER](#)

From: Rocco A. Cavalieri <rcavaliere@tarterkrinsky.com>
Sent: Tuesday, June 1, 2021 12:31 PM
To: Thomas A. Pitta <TPITTA@EMMETMARVIN.COM>
Cc: John Dellaportas <JDellaportas@EMMETMARVIN.COM>
Subject: Genger

Tom,

The Trustee has asked me to relay a proposal in the hopes of a potential global resolution of the case and the years of Genger family litigation. Let me know if you have a few minutes to speak this afternoon. Thanks.

Rocco

Rocco A. Cavalieri|Partner

T: [212-216-1141](tel:212-216-1141) | F: [212-216-8001](tel:212-216-8001)

rcavaliere@tarterkrinsky.com | Bio

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Tarter Krinsky & Drogin LLP, Attorneys-at-Law.

EXHIBIT 83

Sheree Nobles

From: DSpcfogel@foley.com
Sent: Monday, May 4, 2020 4:50 PM
To: Rocco A. Cavalieri
Subject: Settlement communication
Attachments: Settlement Term Sheet Comparison (002).docx

Rocco, here are our comments to the draft term sheet, this should not be controversial, these include a few items from our emails that didn't make it into the draft, we also included the provision for payment of \$50K to the trustee irrespective of approvals by the court, to cover your costs, and general clean-up (we did not include anything re dismissal given this wasn't part of our deal, we are happy to discuss this if and when there is agreement (which we doubt) by otherside to dismiss with prejudice to a refiling).

Please let me know if you have any questions,

Thank you,

Doug

From: Rocco A. Cavalieri <rcavaliere@tarterkrinsky.com>
Sent: Monday, May 4, 2020 10:43 AM
To: Spelfogel, Doug <DSpcfogel@foley.com>
Subject: RE: Settlement communication

** EXTERNAL EMAIL MESSAGE **

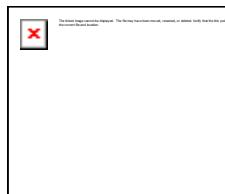
FRE 408
Settlement Discussions Only

Doug,

As discussed, I am pleased to advise that the Trustee is prepared to move forward with a settlement with Sagi Genger and related parties. Thank you for your assistance. Please also extend my thanks to Sagi, John, Tom, Adam, and others.

In furtherance of the upcoming conference, I would like, if possible, to send the Court today a short letter enclosing a settlement term sheet so that the Court is aware of the terms of the settlement, which remain subject to a final settlement agreement between the parties. In that regard, as discussed, please find a draft settlement term sheet I put together quickly for your side's feedback. The settlement term sheet remains subject to the Trustee's review and approval.

Rocco



Rocco A. Cavalieri | Partner
D: 212-216-1141 | F: 212-216-8001
rcavaliere@tarterkrinsky.com | [Bio](#)

Tarter Krinsky & Drogin LLP
1350 Broadway | New York | NY | 10018
www.tarterkrinsky.com

-----Original Message-----

From: DSpelfogel@foley.com <DSpelfogel@foley.com>
Sent: Sunday, May 3, 2020 9:18 PM
To: Rocco A. Cavaliere <rcavaliere@tarterkrinsky.com>
Subject: [EXT] Settlement communication

Rocco, was good talking earlier.

For good order wanted to provide recap re numbers, see below, if questions just let me know.

Payments to estate:

\$350K cash upfront to estate guaranteed

\$600K, to estate from first recoveries (after attorneys fees) from fraud litigation 50% to estate of recoveries above \$23MM (calculated based upon the next recoveries after attorneys fees and the \$950K paid/noted above)

All of which is subject to papering in agreement signed by both sides etc

If any questions, let me know.

Thanks,

doug

Douglas E. Spelfogel
Partner
Foley & Lardner LLP
90 Park Avenue
New York, New York 10016
Tel: 212-338-3566
Email: dspelfogel@foley.com

Sent from my iPhone

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PURSUANT TO FRE 408 -FOR SETTLEMENT PURPOSES ONLY

SETTLEMENT TERM SHEET [Sagi/Dalia Comments]

This Settlement Term Sheet dated May 4, 2020 summarizes the salient terms of a proposed comprehensive settlement of disputes by and between the Sagi Settling Parties (as defined below) and Deborah J. Piazza, the successor chapter 7 trustee of the estate of In re Orly Genger, Case Number (the “Bankruptcy Estate”):

1. The Trustee, on behalf of the Bankruptcy Estate, shall assign to Sagi Genger (or his designee) all of the Bankruptcy Estate’s rights of any and all kinds in and to recover \$32.3 million, plus interest, attorneys’ fees, expenses and costs (the “Fraudulent Conveyance Action”) which represents the settlement amount in a June 16, 2013 settlement agreement (with the “so-called Trump Group Settlement”), comprised of (i) \$17.3 million in cash that was paid by the Trump Group (the “Settlement Cash Proceeds) through Orly Genger to entities controlled by Arnold Broser, David Broser, and Arie Genger and/or entities controlled by one or more of the foregoing, and (ii) two \$7.5 million notes (the “Trump Notes”) payable by the Trump Group, after satisfaction of certain conditions (the “Fraudulent Conveyance Action”), together with all such rights, claims (including the pending litigation in the US District Court under Case No.), and proceeds of all of the foregoing (the “Trump Settlement Proceed Rights”).
2. Sagi to pay (or cause to be paid) the estate \$350,000 (the “Initial Settlement Payment”) within five (5) business days of the execution of an executed settlement agreement (the “Settlement Agreement”), to be held in the Trustee’s escrow account pending approval of any Settlement Agreement, with provide however, that \$50,000 of such monies shall be immediately released to the Trustee (and be retained by the Trustee irrespective of whether the Settlement Agreement is approved by the Court), with the balance of \$300,000 of such monies released to Trustee’s estate account immediately upon a entry of a final Court order (the “Settlement Order”) approving a motion approving the Settlement Agreement. the Settlement Agreement. If the Court denies approval of the Settlement Order or the Settlement Agreement is not approved within 60 days of execution of the agreement (or such longer period as agreed by the parties), the Initial Settlement Payment shall be returned to Sagi within five (5) business days. This Initial Settlement Payment will become property of the estate upon approval entry of the Settlement Agreement Order, and is not dependent on the ultimate success of Sagi in with regard to the Fraudulent Conveyance Action. (provided however that \$50,000 of such amount shall be released to the Estate immediately upon execution of the Settlement Agreement). In addition, Sagi shall also make additional payments to the Trustee on behalf of the Bankruptcy Estate as follows: (i) \$600,000 of the first recoveries from the Fraudulent Conveyance Action, after deduction for Sagi’s attorneys’ fees and costs, and expenses, within five (5) business days of collection therefrom, and (ii) 50% of any recoveries over \$23,000,000 from the Fraudulent Conveyance Action, within 5 calculated based upon the next recoveries after Sagi’s attorneys fees, costs and expenses and the \$950,000 paid above, within five (5) business days of collection therefrom.

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3. Upon entry of the Settlement Order, Sagi, Dalia, ~~and Michael Oldner~~ on behalf of the Orly Genger 1993 Trust, the Sagi Genger 1993 Trust, and any of their successors and assigns (and any other party affiliated therewith, including TPR, Recovery Effort, Inc., Manhattan Safety Maine, Inc., ~~and~~ D&K) (collectively, the “Sagi Settling Parties”)¹ to ~~withdraw all limit their~~ claims against the estate, ~~provided however that any claims that Sagi may have against the Debtor arising from Judge Forrest’s decision, approved by the Second Circuit, shall have recourse against the Fraudulent Conveyance Action only. Further, the Sagi solely to the Trump Settlement Proceed Rights.~~ Further, upon the Court’s approval of the Settlement Agreement, the Settling Parties ~~--upon the written request of the Trustee-~~ shall withdraw the pending discharge actions filed in the Bankruptcy Court and ~~agree that shall not object to~~ the Debtor ~~shall be being~~ discharged from any debt owing to such parties as of the date the Court enters ~~an order approving the Settlement Agreement.~~ the Settlement Order, provided that the Settling Parties’ claims against the Debtor shall be specifically preserved by the Settlement Order to the extent necessary for them to collect under the Fraudulent Conveyance Action. Further, ~~Dalia Genger shall withdraw the constructive trust action filed in the Bankruptcy Case. Further, upon approval entry of the Settlement Agreement Order, the Sagi Settling~~ Parties (and any assignees or otherwise) shall not participate in the case, except as otherwise provided herein, it being anticipated that the rights of the Sagi Settling Parties to collect on any claims they have asserted within the Bankruptcy proceeding will be limited to Sagi’s successful pursuit of all claims in the Fraudulent Conveyance Action to the Trump Settlement Proceed Rights. Nothing herein shall be understood as to limit the Proof of Claim of TPR Investment Associates, Inc. against the third-party sureties to recover on the bonds described in its Proof of Claim.
4. Mutual releases between the Trustee on behalf of the Bankruptcy Estate of all estate claims against the Sagi Settling Parties.
5. Stay of all pending litigation and deadlines in all pending actions described in the Status Chart provided to the Court on April 17, 2020 while the Trustee prosecutes the Settlement Motion, including withdrawal of Sagi’s dismissal motion upon Court’s approval of a Settlement Agreement as provided herein.
6. Sagi to waive lien on homestead upon Court approval of the Settlement Agreement.
7. Trustee to use best efforts to request that get Arie Genger to waive any lien against the Debtor’s rights, if any, in with respect to the Trump Notes Settlement Proceed Rights which may be owned by the Bankruptcy Estate; absent such consent, the Trustee shall provide Sagi with standing to pursue all rights of the Trustee for avoidance of such

¹ _____ The definition of Sagi Settling Parties will be written as broadly as possible to cover all parties associated in any way to the Sagi Settling Parties, but specifically to exclude Orly Genger, Arie Genger, Eric Herschmann, Kasowitz and any other parties that are subjects of the Fraudulent Conveyance Action but could be considered “insiders” or “affiliates” or Sagi or Dalia Genger.

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PURSUANT TO FRE 408 -FOR SETTLEMENT PURPOSES ONLY

- lien on the Trump Notes, if deemed necessary in connection with the Fraudulent Conveyance Action.Proceed Settlement Rights.
8. Estate retains the rights to pursue any and all assets and other causes of action that estate may have, except relating to (i) the Fraudulent Conveyance ActionTrump Proceed Settlement Rights, which isclaims are being assigned to Sagi, and (ii) the claims against the SagiSettling Parties, which are subject of the mutual release set forth in paragraph no. 4. Thus, for the avoidance of all doubt, the Trustee retains all other rights to assets and causes of action, including the Bankruptcy Estate's claims against Zeichner Ellman for all possible acts or omissions that caused damage to the Debtor, except for Zeichner's acts and omissions relating to Trump Proceed Settlement Rights, including but not limited to the District Court action styled as *Recovery Effort Inc. v. Zeichner Ellman and Krause and Wachtel Misry*, S.D.N.Y. 19 Civ 5641 (Judge Broderick).
 9. This Settlement Term Sheet is non-binding and remains subject to the execution of a mutually acceptable Settlement Agreement between the SagiSettling Parties and the Trustee who shall use best efforts to execute by May 1215, 2020.
 10. The Trustee shall use best efforts to file a motion to approve the Settlement Agreement by May 2622, 2020;
 11. The parties to the Settlement Agreement shall provide such further cooperation as may become necessary to effectuate the terms of the agreement, and shall not take any steps which would frustrate the property rights of the other.
 - 11.12. The parties reserve their rights to include additional terms in the Settlement Agreement that are not otherwise inconsistent with the foregoing and are otherwise necessary to effectuate a global settlement between the parties.

ADD SIGNATURE BLOCK FOR COUNSEL TO FOREGOING PARTIES.

EXHIBIT 84

EMMET, MARVIN & MARTIN, LLP
COUNSELLORS AT LAW



120 Broadway
New York, New York 10271
212-238-3000
Fax: 212-238-3100
www.emmetmarvin.com

MEMORANDUM

TO: **Deborah Piazza, Esq.**

FROM: **Thomas A. Pitta**
John Dellaportas

DATE: **December 16, 2019**

RE: ***In re Orly Genger, Case #: 19-13895-jlg***

Our firm represents judgment creditor Sagi Genger (“Sagi”). We write to provide you with a broad introduction to the above-referenced bankruptcy case, and to request a meeting at your earliest convenience to discuss our views on a way forward.

Executive Summary

This is not an ordinary bankruptcy case. The debtor, Orly Genger (“Orly”), and her husband, Eric Herschmann, enjoy a collection of multi-million dollar homes around the world. Mr. Herschmann is a senior partner at a major New York law firm. At his prior job, he received an executive severance package of \$50 million and use of a corporate jet. His exotic car collection includes a Rolls Royce, Bentley and Lamborghini. This case is an attempt to shield that wealth and Orly’s prior diversion of tremendous value through fraudulent transfers intended to frustrate her legitimate creditors.

Most significantly, the U.S. District Court for the Southern District of New York, in decision later affirmed by the U.S. Court of Appeals for the Second Circuit, found that, in 2013, “**Orly had monetized her beneficial interest [in a family business] for \$32.3 million.**” *Genger v. Genger*, 2018 WL 3632521 (S.D.N.Y. July 27, 2018), *aff’d*, 771 F. App’x 99 (2d. Cir. 2019). *See Exhs. A, B.* Post-judgment discovery has revealed that, in the ensuing six years, Orly purported to convey and encumber that \$32.3 million to her family members—specifically, her husband, her father Arie Genger (“Arie”), and certain of his creditors—for no meaningful consideration. In June and July of this year, Sagi brought proceedings to set aside those fraudulent conveyances. Orly responded with this bankruptcy filing, in which she claims “total property” of only \$56,628 plus a 50% interest in an Austin, Texas downtown condominium. *See Exh. C.*

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In a transparent attempt to frustrate collection, Orly filed for bankruptcy not in this District, in which these matters have been steadily litigated since 2008, but rather in the U.S. Bankruptcy Court for the Western District of Texas, where she claims to have recently moved. In September of this year, Sagi moved to dismiss the case as a bad faith filing, or in the alternative to transfer the case to this District. *See Exh. D.*

By Order dated November 7, 2019, the U.S. Bankruptcy Court granted the motion to transfer, while deferring on the motion to dismiss in favor of the transferee court. *See Exh. E.* Central to the Court's thinking was the missing \$32 million:

... [T]he bankruptcy will create a new layer of litigation that arises from the same transactions, facts and set of occurrences that are the subject of litigation that has been concluded and the litigation that remains pending in New York.

In particular I'm thinking of the Section 727 adversaries in which the Debtor will be required to explain what happened to 32 million dollars The issues related to [Orly's Austin] condo, the gift and the pledge, will be only a fraction of the issues dealt with in the fraudulent conveyance and nondischarge cases. **The other issues all relate to the 32 million and where it went, all of which has been the subject of more than a decade of litigation pending in New York.**

Exh. F at 4, 5, 8 (emphases added).

Recovery of the \$32.3 million for the Chapter 7 estate should be sufficient to pay most or all of the outstanding claims against the estate. Nor should such recovery be a particularly lengthy or challenging process. On June 11, 2019, Sagi filed a CPRL 5225 motion to set aside the conveyances, based on the findings of the U.S. District Court (discussed above). *See Exh. G.* Orly's lawyers responded by seeking a lengthy extension of Orly's response deadline, supposedly to accommodate vacation schedules. Instead, a few days before her response date, Orly filed this case and invoked the stay.

In other words, basically all that is left to recover the \$32.3 million is a reply brief. Whether that reply brief is ultimately filed in the Bankruptcy Court or the District Court, the result should be the same. It has been fully adjudicated that Orly monetized her interest in the family business for \$32.3 million, and it is undisputed that the parties who received that money gave her no consideration for it. Below, we provide the outlines for a potential settlement agreement that will recover that money for the estate, and thereby ensure that all estate creditors are paid in full.

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The Missing \$32.3 Million

On June 16, 2013, Orly entered into a settlement agreement (the “2013 Settlement Agreement”) with certain third parties (together, the “Trump Group”) whom she and Arie had sued over her claim to ownership of shares in a family business called Trans-Resources, Inc. (“TRI”). Orly fought for over a year to keep the settlement confidential, but ultimately the District Court directed its production. *See* Exh. H. In it, Orly settled her claims for \$32.3 million, consisting of \$17.3 million cash up front, plus two \$7.5 million promissory notes to be paid once certain conditions were met.

Immediately upon receipt, Orly’s then-attorney (at her direction) wired the first \$17.3 million to a purported trust established for the benefit of her father’s (not her) lenders, Arnold and David Broser. *See* Exh. I. Because, however, the remaining \$15 million had not yet come due, the money could not be fraudulently conveyed. So instead, by agreement dated March 31, 2017, Orly assigned away a significant portion of her future payment—the first \$4.5 million to the Brosers, and the second \$2.0 million to her husband, with the balance to be paid in the future pursuant to hers and Arie’s joint written instructions (which, to date, have not been given). *See* Exh. J.

In other words, before any fraudulent conveyance action need be brought, there is already \$8.5 million in the estate (which Orly failed to list on her schedules).¹ While release of the funds requires Arie’s consent, Arie has advised the IRS that Orly is entitled to 58.13% of any recovery under the 2013 Settlement Agreement, and the District Court found that that all 100% was attributable to Orly’s claims. That means the estate’s share of the \$32.3 million, at a minimum, is worth \$18.8 million. If the District Court’s past findings are collateral estoppel, or if the Bankruptcy Court independently reaches the same findings, then the estate will be entitled to all \$32.3 million.²

Orly’s Condominium Ownership

Other than her claim to the \$32.3 million, Orly’s only other material asset is her 50% interest (her husband owns the other 50%) in a multi-million dollar condominium atop the W Hotel in downtown Austin, Texas. According to real estate professionals, the apartment is worth at least \$3 million in total. *See* Exh. M.

¹ The Trump Group asserts an offset claim against the notes in the amount of approximately \$3 million.

² Because the litigation claims Orly settled were brought by Orly on behalf of her trust, the Orly Genger 1993 Trust, the Trust has separately brought its own fraudulent conveyance action seeking recovery of the \$32.3 million. *See* Exh. K. Sagi and the Trust have entered into an Inter-Creditor Agreement to share any proceeds recovered as between the two of them. *See* Exh. L.

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Orly's Claims against Sagi

As you will see from the various decisions, the Genger family, unfortunately, has been embroiled in litigation for over a decade. Other than the litigations involving the \$32.3 million, these suits are largely concluded and have little bearing on the current suit. However, Orly currently has two suits with “live” claims against Sagi:

#1: *Orly Genger v. Sagi Genger, N.Y. Sup. Ct. 100697/2008.* In this suit, Orly claimed that Sagi had fraudulently induced her into selling her 50% share in a Canadian real estate venture for only \$100,000, when in fact her share was worth \$12 million. The Supreme Court assigned the matter to a CPA financial accounting expert to calculate the true value of her share. Earlier this year, the CPA issued a 145-page report, finding that Orly’s interest was worth between \$99,551 and \$132,374. *See* Exh. N at 63.

While Sagi disagrees with certain of the CPA’s findings, in order to spare himself and the estate the burden and expense of a trial, he is willing to settle for the higher of the two numbers, and pay \$32,374 as an offset on his claim against the estate.

#2: *Orly Genger v. Dalia Genger et al, N.Y. Sup. Ct. 109749/2009.* In this suit, Orly claimed that Sagi had harmed her trust (the Orly Genger 1993 Trust) by selling shares of a business (TPR Investment Associates) in which her trust had an indirect interest, for less than market value. Following a two-week trial before the late Judicial Hearing Officer Gammerman, which the Supreme Court adopted in full, it was found that the sale price was proper, and damages were \$0. *See* Exh. O. Orly has appealed.

Sagi does not believe Orly’s appeal, if perfected, will be meritorious. She will be seeking to have the Appellate Division overturn witness credibility findings made by a widely-respected judge, following a lengthy trial. Further, even were she to prevail, any recovery would go to the Orly Genger 1993 Trust, not the estate. Accordingly, we do not believe this claim belongs to the estate. If, nonetheless, you believe you have authority to settle this case, and the Bankruptcy Court agrees, defendants Sagi, D&K GP LLC and TPR are willing to settle the case as a joint walk-away, in which they would drop their claims for \$700,000 in legal fees and expenses for the wrongly-issued attachment and injunction, and the claims against all defendants would be dismissed.

The Prior, Non-Approved Settlement

Prior to transfer, the former, Texas-based, Chapter 7 trustee (without offering anyone the opportunity to make a counter) entered into a proposed settlement agreement with the debtor, her husband, and the recipients of the aforementioned \$32.3 million, whereby, in exchange for an upfront payment of \$400,000 and a conditional, back-end payment of \$800,000, the estate would abandon its claim to the 50% apartment interest, the \$8.5 million in uncommitted future litigation proceeds, and the \$23.8 million in fraudulently transferred and/or encumbered litigation proceeds.

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The settlement was never approved and—in transferring the case to this District—the Court made it clear the settlement was unlikely to have been approved even absent transfer. *See Exh. F at 3 (“[T]he Trustee here has already... reached a settlement. A move to New York could lead to a new Trustee, and a need for that Trustee to... redo what has been done But it’s not clear how much, in fact, has been done. The 9019 is only 14 pages and is mostly platitudes, very sparse description of the many facts in play here and it does not even identify, let alone discuss, the issues being settled.”).*

Sagi’s Proposed Settlement Terms

In any event, Sagi is prepared to offer the estate significantly better settlement terms than any which the debtor and her cohorts have offered or can offer.

1. DIP Loan. In order to ensure that the trustee has sufficient funds to proceed with the administration of the estate, Sagi is willing to provide the estate with an immediate, \$150,000, interest-free DIP loan.

2. The Apartment. The trustee would agree to sell the entire apartment interest on the open market. In exchange, Sagi would provide a stalking horse bid of \$1.6 million--twice the implied value of the property under the prior, non-approved settlement between the former trustee and Eric Herschmann.

3. Orly’s Cases against Sagi. Orly’s cases against Sagi will be resolved in the manner proposed above.

4. The Missing \$32.3 Million. As noted above, Sagi was on the cusp of getting a ruling from the District Court restoring the \$32.3 million in fraudulent conveyances to the estate, when Orly filed for bankruptcy to stop that very outcome. The CPLR 5225 motion is already briefed, and the estate has the right to proceed with that motion. Should it do so, Sagi would agree to front the litigation expenses for Emmet, Marvin & Martin, LLP to prosecute the remainder of briefing, any evidentiary hearing, and any appeal on behalf of the trustee (Sagi’s collection costs to be recouped only from any recovery in the fraudulent conveyance action).

As noted above, the payment of the final \$15 million of the \$32.3 million is subject to certain contingencies (namely, the execution of certain third-party releases). Sagi will obtain the requisite releases from those third parties. Lastly, if the estate wishes to enter into a sharing agreement with the Orly Genger 1993 Trust similar to the one Sagi has entered into, Sagi will use his best efforts to assist the parties in reaching such a deal.

5. Arie’s Fraudulent Note and UCC Filing. Less than one year prior to the filing of the bankruptcy, Arie filed a UCC by which Orly purported to pledge all of her

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assets to her father. Sagi is prepared to provide evidence demonstrating the promissory note that UCC filing purports to secure is backdated and fraudulent and largely reflects claims for which Orly has no legitimate liability. Upon submission of such evidence, the trustee will retain Emmet, Marvin & Martin, LLP to object to Arie's claims and to bring an action to set aside the preferential filing of the UCC.

TP/JD